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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of the )  
Telecommunications Act )  
of 1996 )  
 )  
Amendment of Rules Governing )  
Procedures to Be Followed When )  
Formal Complaints Are Filed )  
Against Common Carriers )  
 )

CC Docket No. 96-238

COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), pursuant to the Common Carrier Bureau's Public Notice DA 97-2178 released December 12, 1997 in the above-captioned docket hereby respectfully submits its comments on the Bureau's proposal to adopt an accelerated "hearing-type alternative to the normal process for resolution of formal complaints." *Public Notice* at 2.

As a general matter, Sprint has no objection to the implementation of the Bureau's so-called "Accelerated Docket" approach for complaint adjudication. Although this approach will impose significant burdens on complainants, defendants and the Commission staff, the rapid resolution of certain types of complaints, especially complaints involving anti-competitive actions by a Bell Operating Company (BOC) when, and if, it is permitted to enter the in-region interLATA market, is necessary. Unless the Commission takes swift action in such cases, the pro-

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competitive goals of the 1996 Telecommunications Act will be difficult to achieve.

Nonetheless, expediting the complaint process by imposing certain pre-filing activities upon the parties; by requiring the complaint, answer and other required pleadings to contain all relevant facts with supporting documentation; or by implementing the Accelerated Docket option now being considered will not, in and of itself, ensure the resolution of a complaint proceeding within the deadlines imposed by the Communications Act. As Sprint explained in its Comments on the Commission's *Notice of Proposed Rulemaking* issued in this proceeding, 11 FCC Rcd 20823 (1996), such procedures, at best, will only put the Commission in the position to swiftly resolve a complaint. It will be up to the Commission to ensure that once the record is closed decisions will be issued in a timely fashion.

Below, Sprint submits its comments on the various issues regarding the Bureau's Accelerated Docket proposal. As requested, Sprint has organized its comments under the numbered headings set out in the Bureau's *Public Notice*.

#### **1. Need for Accelerated Docket**

The *Public Notice* (at 3) asks for comments on the "factors that may support the creation of a hearing-type, accelerated complaint process..." Sprint believes that the main factor supporting the Bureau's proposal to adopt its Accelerated Docket approach is suggested by Section 271(d)(6) of the Communications

Act. 47 U.S.C. §271(d)(6). By establishing a 90-day deadline for the Commission to resolve complaints alleging violations by the BOCs of the conditions needed to gain approval to provide in-region interLATA service, Congress has emphasized that swift action is necessary when the competitive goals of the 1996 Act are placed at risk. In light of this Congressional emphasis, and given the fact that the Bureau's proposal is likely to impose significant costs on the parties and Commission staff, Sprint believes that accelerated hearing procedures should be used, at least initially, to resolve complaints involving Section 271 violations by the BOCs. As the Commission and parties gain experience with the accelerated hearing process, and assuming that such process proves to be an effective way for resolving complaints more rapidly, the Accelerated Docket approach can be used to resolve other types of complaints.

## **2. Minitrials**

Sprint agrees with the Bureau's proposal to "conduct[] minitrials of complaints accepted onto the Accelerated Docket." *Public Notice* at 3. Sprint also agrees that each side to the dispute be given "an equal amount of time within which to present its case and to cross examine its opponent's witnesses." *Id.* at 3-4. Of course, the time allotted to each side must be reasonable and commensurate with the complexity of the issues involved. But, as the Commission points out, times limits are necessary because of "the need for dispatch" (*id.* at 3) in

completing the hearing and allowing sufficient time for the decision maker to write and issue an opinion.

### **3. Discovery**

Sprint agrees that the discovery rules adopted in the *Report and Order* (FCC 97-396) issued November 25, 1997 (*Complaint R&O*) in this proceeding should be utilized in Accelerated Docket proceedings. Those rules, as well as the so-called "information designation" required to be included in complaints, answers and replies, appear to be particularly well-suited for the compressed time frame involved in these accelerated proceedings.

The *Public Notice* (at 4) asks for comments on when the parties should be required to exchange relevant documents; whether the parties should also be required to exchange information that is "likely to bear significantly on any claim or defense"; and what sanctions should be imposed upon a party "for failing to provide discovery as ordered by the Task Force." Sprint recommends that the parties should only be required to exchange documents relevant to the issues and that such exchange should occur prior to the status conference. A requirement that information that "bears significantly" on the issues raised would appear to be sufficiently vague that discovery disputes are certain to arise which, in turn, could delay the proceeding. Sprint also recommends that if the complaining party fails to provide discovery as ordered by the Task Force and cannot demonstrate any legitimate reason for such failure, the complaint

should be dismissed. Similarly, if the defendant fails to produce information required by the Task Force and does not offer any reasonable basis for such failure, the complainant should be granted summary judgment. The threat of dismissal or the risk of losing the case by summary judgment should be a powerful incentive for the parties to comply with the discovery rulings of the Task Force.

#### **4. Pre-filing Procedures**

The *Public Notice* asks a series of questions about what, if any, pre-conditions the complainant should be required to meet to have its complaint accepted onto the Accelerated Docket. One suggested pre-condition is that the complainant would have to attempt to undertake informal settlement discussions with the defendant under the auspices of the Task Force. While Sprint has no objection to such a condition -- settlement is always preferable over litigation -- any requirement that a complainant attempt to engage in settlement discussions should not be allowed to unreasonably delay the complainant's ability to file a complaint and begin the process of obtaining relief from the Commission within the statutory deadlines.

As for the other issues raised under this heading, Sprint believes (1) that a defendant, if it so desires, should be afforded the option to request that the complaint accepted onto the Accelerated Docket even if the complainant does not do so. Although such requests are likely to rare, there is no reason to

deprive the defendant of the opportunity to receive a quick ruling on whether the complained-of practice violates the Act; (2) that since the Accelerated Docket should be used to adjudicate complaints arising under Section 271(d)(6), there is no need at this point to include previously-filed complaints onto the Accelerated Docket; and, (3) that parties engaged in informal pre-filing discussions be allowed to protect any information as proprietary or confidential without limitation; if such information is later provided in a formal investigation, the party would be able to protect the documents as provided for under Section 1.731 of the Commission's rules.

#### **5. Pleading Requirements**

Sprint has no objection to a requirement that an answer to a complaint placed on the Accelerated Docket be filed within seven days. The defendant will have been made aware of the issues to be raised by the complainant in the informal settlement talks to be conducted under the auspices of the Task Force. Moreover, it will have had to gather its own information and documents in order to participate in such talks. Thus, the defendant will, in reality, have more than seven days in which to prepare its answer to a formal complaint placed on the Accelerated Docket. See *Complaint R&O* at ¶100.

**6. Status Conferences**

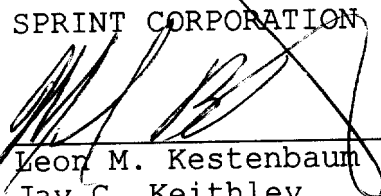
Sprint has no objection to adoption of the requirements for the initial status conference in the conjunction with the complaints placed onto the Accelerated Docket.

**7. Damages**

Sprint has no objection to limiting the Accelerated Docket to "bifurcated liability claims" with the damages phase to be conducted in accordance with the procedures set forth in the *Complaint R&O*.

Respectfully submitted,

SPRINT CORPORATION



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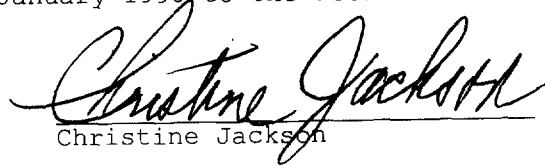
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January 12, 1998

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **Comments of Sprint Corporation** was sent by hand or by United States first-class mail, postage prepaid, on this the 12<sup>th</sup> day of January 1998 to the attached listed.

  
Christine Jackson

January 12, 1998



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